

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
SEATTLE

ALASKA AIRLINES, INC., an Alaska )  
Corporation, )  
Plaintiff, )  
v. )  
JUDY SCHURKE, in her official capacity as )  
Director of the State of Washington Department )  
of Labor and Industries, and ELIZABETH )  
SMITH, in her official capacity as Employment )  
Standards Program Manager, of the State of )  
Washington Department of Labor and Industries )  
Defendants. )

COMPLAINT FOR INJUNCTIVE  
AND DECLARATORY RELIEF

Plaintiff Alaska Airlines, Inc. (“Alaska”), by and through its counsel, for its complaint against Defendants Judy Schurke, Director of the State of Washington Department of Labor and Industries, and Elizabeth Smith, Manager of the State of Washington Department of Labor and Industries’ Employment Standards Program, upon knowledge and belief alleges:

**COMPLAINT FOR INJUNCTIVE AND  
DECLARATORY RELIEF - 1**

## JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this suit pursuant to 28  
U.S.C. § 1331 and § 1367 as Plaintiff's claim arises under the U.S. Constitution art. VI,  
cl. 2 (the "Supremacy Clause") and the laws of the United States, namely the Railway  
Labor Act ("RLA"), 45 U.S.C. § 151 *et seq.*

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1331(b), as this Court is sited in the judicial district where a substantial part of the events giving rise to Plaintiff's claims have occurred, are now occurring, and will occur in the future. Plaintiff and its primary place of business is situated in this district and is and will continue to be affected by the irreparable harms sought to be remedied and prevented by this Court's action upon this Complaint.

## **II. NATURE OF ACTION**

3. This action seeks declaratory relief pursuant to the Declaratory Relief Act, 28 U.S.C. §§ 2201–2202, and Fed. R. Civ. P. 57, that the Washington Family Care Act (“WFCA”), RCW 49.12.265–.295, is preempted by the RLA. It also seeks preliminary and permanent injunctive relief enjoining the enforcement of the WFCA and other related actions undertaken by Defendants pursuant to its provisions. (A copy of the WFCA is attached hereto as Exhibit A.)

### III. PARTIES

4. Plaintiff Alaska, an Alaska corporation, is, and at all times relevant hereto has been, a "carrier" within the meaning of the RLA. 45 U.S.C. § 151. Alaska's corporate headquarters are in Seatac, Washington.

**COMPLAINT FOR INJUNCTIVE AND  
DECLARATORY RELIEF - 2**

1       5. Alaska is a federally regulated common carrier, conducting an estimated  
 2 440 departing flights per day and flying to over sixty cities in the continental United States,  
 3 Hawaii, Alaska, Canada, and Mexico. Alaska employs approximately 9,550 employees  
 4 and has six separate collective bargaining agreements negotiated with five different unions  
 5 under the RLA. Over 2,700 of Alaska's employees are flight attendants whose employ-  
 6 ment is governed by the collective bargaining agreement entered into between Alaska and  
 7 the Association of Flight Attendants ("AFA"). (A copy of the agreement between Alaska  
 8 and AFA is attached hereto as Exhibit B and hereinafter referred to as the "Alaska CBA".)  
 9 The Alaska CBA contains language controlling the frequency and extent of sick pay and  
 10 vacation use. It also confirms that the company will comply with the terms of the laws of  
 11 the state in which the employee is based, including laws in Washington, Oregon, and Cali-  
 12 fornia. And finally, the Alaska CBA prescribes Alaska's mandatory grievance procedures,  
 13 with which Alaska flight attendants must comply to grieve their discipline or discharge.

14       6. Defendant Judy Schurke is the Director of the State of Washington Depart-  
 15 ment of Labor and Industries (the "Department"). RCW 43.22.270(4) mandates that as  
 16 Director, Ms. Schurke has "the power to . . . supervise the administration and enforcement  
 17 of all laws respecting the employment and relating to the health, sanitary conditions, sur-  
 18 roundings, hours of labor, and wages of employees employed in business and industry in  
 19 accordance with the provisions of chapter 49.12 RCW." As Director, Ms. Schurke may  
 20 also "exercise such powers and perform such other duties as may be provided by law." *Id.*  
 21 Pursuant to RCW 49.12.280, Ms. Schurke, in her official capacity as Director of the De-  
 22 partment of Labor and Industries, "shall administer and investigate violations of RCW  
 23 49.12.270 and 49.12.275." And, pursuant to RCW 49.12.285, Ms. Schurke, in her official

COMPLAINT FOR INJUNCTIVE AND  
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1 capacity as Director, "may issue a notice of infraction" and assess a "monetary penalty" on  
 2 employers who are found to have committed an infraction under RCW 49.12.270 and  
 3 49.12.275. Thus, as the Department's Director, Ms. Schurke has power to enforce the  
 4 WFCA.

5       7. Defendant Elizabeth Smith is the Manager of the Department's Employ-  
 6 ment Standards Program. RCW 43.22.270(4) mandates that the Director of Labor and In-  
 7 dustries, Ms. Schurke shall, "with the assistance of the supervisor of employment stan-  
 8 dards," Ms. Smith, "supervise the administration and enforcement of all laws respecting  
 9 the employment and relating to the health, sanitary conditions, surroundings, hours of la-  
 10 bor, and wages of employees employed in business and industry in accordance with the  
 11 provisions of chapter 49.12 RCW." Pursuant to Washington Administrative Code 296-06-  
 12 040, the operations of the Employment Standards Program is to "[d]evelop[] and enforce[]  
 13 rules regulating wages (including prevailing wages for public works projects) and hours,  
 14 and working conditions . . . ." Thus, as Manager of the Department's Employment Stan-  
 15 dards Program, Ms. Smith has power to enforce the WFCA.

#### 16                  IV. GENERAL FACTUAL ALLEGATIONS

17       8. Alaska voluntarily complies with the Family Care Act of Washington and  
 18 similar acts in Oregon and California. In its history of providing family care leave and  
 19 pay, however, Alaska has found that a percentage of employees, especially its flight atten-  
 20 dants, abuse the benefits by claiming them for the employees' convenience rather than the  
 21 purpose for which they were intended.

22       9. In 2010, in the flight attendant group alone, Alaska flight attendants were  
 23 absent 6,263 days for sick family leave. When a flight attendant calls in sick, the situation

#### COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF - 4

1 is much different than a regular work assignment. Flight attendants are scheduled to work  
 2 on pairings, which are multi-day assignments including multiple flights. If the flight at-  
 3 tendant misses the beginning of the trip, he or she receives sick leave for the entire trip,  
 4 even though the family member may not require care on the days subsequent to the begin-  
 5 ning of the trip. Ultimately, these 6,263 absences converted to an estimated \$940,000 that  
 6 Alaska paid to flight attendants as sick leave compensation to cover sick family use in  
 7 2010.

8       10. The Alaska CBA expressly acknowledges that fraudulent use of sick leave  
 9 is grounds for discipline. Alaska CBA § 32(H). Therefore, Alaska actively investigates  
 10 flight attendants who appear to be claiming benefits when they did not have a bona fide  
 11 reason for sick leave pay. Yet, also pursuant to the Alaska CBA, employees are entitled to  
 12 grieve their discipline through Alaska's mandatory grievance procedures. *See* Alaska CBA  
 13 §§ 19 & 20. This formal grievance procedure ensures that employees are given a fair  
 14 process to have their complaints heard and resolved.

15       11. Since March 2010, Alaska has received 11 complaints from the Department  
 16 alleging violations of the WFCA. Alaska has fully complied with the Department's re-  
 17 quests for responses and documentation. Alaska even met with the Department's Mr.  
 18 David Johnson on June 25, 2010, to discuss the complaints and to and to resolve whatever  
 19 concerns might be contributing to the spate of complaints. Even though Alaska was confi-  
 20 dent that its processes complied with WFCA, it reviewed and adjusted certain processes  
 21 used in the Flight Attendant work group for requesting family sick leave to try to resolve  
 22 any lingering doubts on the Department's part and communicated those changes to Mr.  
 23 Johnson.

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12. Yet, while Alaska has gone out of its way to work with the Department, the Department has continued to independently investigate and address Alaska employees' WFCA complaints. The result of the Department's independent enforcement is problematic to Alaska for a number of reasons. First, some employees have begun to completely forgo the mandatory grievance process established by the Alaska CBA and favored by Congress as expressed throughout the RLA. *See, e.g.*, 45 U.S.C. §§ 151a & 152. Second, other employees have utilized both processes – filing complaints with the Department as well as grievances through Alaska's mandatory arbitration process. With these latter employees, Alaska faces the costs of litigation in multiple forums, a loss of efficiency, and the risk of conflicting outcomes because the decision-makers of these bodies – Alaska's grievance tribunal and the Department – differ.

13. The Department cannot resolve claims brought against Alaska under the WFCA without interpreting the Alaska CBA, a task which under the RLA is delegated exclusively to the System Board of Adjustment. And, by instigating independent enforcement actions separate and apart from the RLA's mandated arbitration procedure, the Department is interfering with the RLA policy of "prompt and orderly settlement[s]" in violation of the Supremacy Clause.

## **V. STATEMENT OF CLAIMS**

## **FIRST CAUSE OF ACTION (Supremacy Clause)**

14. Plaintiff realleges and incorporates herein its allegations in paragraphs 1 through 13 above.

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15. The Department's enforcement actions with respect to WFCA claims against Alaska violate the Supremacy Clause. U.S. Const. art. VI, cl. 2.

16. The Department's violation of the Supremacy Clause has harmed Alaska in terms of undermining its collectively-bargained grievance and arbitration process and causing undue cost and burden for Alaska.

## **SECOND CAUSE OF ACTION (RLA Preemption)**

17. Plaintiff realleges and incorporates herein its allegations in paragraphs 1 through 16 above.

18. The Department's enforcement actions with respect to WFCA claims against Alaska fail to comply with the Railway Labor Act's preemption clause. 45 U.S.C. § 151a.

19. The Department's failure to comply with the RLA preemption doctrine has harmed Alaska in terms of undermining its collectively-bargained grievance and arbitration process and causing undue cost and burden for Alaska.

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DECLARATORY RELIEF - 7**

## **PLAINTIFF'S PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays for judgment as follows:

1. Declaring that the WFCA, RCW 49.12.265–.295, as applied to Alaska, is preempted by the Supremacy Clause;
  2. Declaring that the WFCA, RCW 49.12.265–.295, as applied to Alaska, is preempted by the RLA;
  3. Temporarily, preliminarily, and permanently enjoining Defendants from taking any action to enforce the WFCA, RCW 49.12.265–.295, against Alaska; and
  4. Granting such further relief to Plaintiff that the court finds just and equitable.

DATED this 1<sup>st</sup> day of April, 2011.

Davis Wright Tremaine LLP  
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**COMPLAINT FOR INJUNCTIVE AND  
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**TAB A**

**C**

West's Revised Code of Washington Annotated Currentness

Title 49. Labor Regulations ([Refs & Annos](#))

[Chapter 49.12. Industrial Welfare \(Refs & Annos\)](#)

→ **49.12.265. Sick leave, time off--Care of family members--Definitions**

The definitions in this section apply throughout [RCW 49.12.270](#) through [49.12.295](#) unless the context clearly requires otherwise.

(1) "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is: (a) Under eighteen years of age; or (b) eighteen years of age or older and incapable of self-care because of a mental or physical disability.

(2) "Grandparent" means a parent of a parent of an employee.

(3) "Parent" means a biological or adoptive parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child.

(4) "Parent-in-law" means a parent of the spouse of an employee.

(5) "Sick leave or other paid time off" means time allowed under the terms of an appropriate state law, collective bargaining agreement, or employer policy, as applicable, to an employee for illness, vacation, and personal holiday. If paid time is not allowed to an employee for illness, "sick leave or other paid time off" also means time allowed under the terms of an appropriate state law, collective bargaining agreement, or employer policy, as applicable, to an employee for disability under a plan, fund, program, or practice that is: (a) Not covered by the employee retirement income security act of 1974, [29 U.S.C. Sec. 1001 et seq.](#), and (b) not established or maintained through the purchase of insurance.

(6) "Spouse" means a husband or wife, as the case may be.

#### CREDIT(S)

[[2005 c 499 § 1](#), eff. July 24, 2005; [2002 c 243 § 2](#).]

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West's Revised Code of Washington Annotated Currentness

Title 49. Labor Regulations ([Refs & Annos](#))

¶ [Chapter 49.12. Industrial Welfare \(\[Refs & Annos\]\(#\)\)](#)

→ [49.12.270. Sick leave, time off--Care of family members](#)

(1) If, under the terms of a collective bargaining agreement or employer policy applicable to an employee, the employee is entitled to sick leave or other paid time off, then an employer shall allow an employee to use any or all of the employee's choice of sick leave or other paid time off to care for: (a) A child of the employee with a health condition that requires treatment or supervision; or (b) a spouse, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency condition. An employee may not take advance leave until it has been earned. The employee taking leave under the circumstances described in this section must comply with the terms of the collective bargaining agreement or employer policy applicable to the leave, except for any terms relating to the choice of leave.

(2) Use of leave other than sick leave or other paid time off to care for a child, spouse, parent, parent-in-law, or grandparent under the circumstances described in this section shall be governed by the terms of the appropriate collective bargaining agreement or employer policy, as applicable.

CREDIT(S)

[[2002 c 243 § 1](#); [1988 c 236 § 3](#).]

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Title 49. Labor Regulations (Refs & Annos)

¶ Chapter 49.12. Industrial Welfare (Refs & Annos)

→ **49.12.275. Sick leave, time off--Care of family members--Poster required**

The department shall develop and furnish to each employer a poster which describes an employer's obligations and an employee's rights under RCW 49.12.270 through 49.12.295. The poster must include notice about any state law, rule, or regulation governing maternity disability leave and indicate that federal or local ordinances, laws, rules, or regulations may also apply. The poster must also include a telephone number and an address of the department to enable employees to obtain more information regarding RCW 49.12.270 through 49.12.295. Each employer must display this poster in a conspicuous place. Every employer shall also post its leave policies, if any, in a conspicuous place. Nothing in this section shall be construed to create a right to continued employment.

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[1988 c 236 § 2.]

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Title 49. Labor Regulations (Refs & Annos)

↪ Chapter 49.12. Industrial Welfare (Refs & Annos)

→ **49.12.280. Sick leave, time off--Care of family members--Administration and enforcement**

The department shall administer and investigate violations of RCW 49.12.270 and 49.12.275.

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[1988 c 236 § 4.]

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Title 49. Labor Regulations ([Refs & Annos](#))

[Chapter 49.12. Industrial Welfare \(Refs & Annos\)](#)

        → **49.12.285. Sick leave, time off--Care of family members--Monetary penalties**

The department may issue a notice of infraction if the department reasonably believes that an employer has failed to comply with RCW 49.12.270 or 49.12.275. The form of the notice of infraction shall be adopted by rule pursuant to chapter 34.05 RCW. An employer who is found to have committed an infraction under RCW 49.12.270 or 49.12.275 may be assessed a monetary penalty not to exceed two hundred dollars for each violation. An employer who repeatedly violates RCW 49.12.270 or 49.12.275 may be assessed a monetary penalty not to exceed one thousand dollars for each violation. For purposes of this section, the failure to comply with RCW 49.12.275 as to an employee or the failure to comply with RCW 49.12.270 as to a period of leave sought by an employee shall each constitute separate violations. An employer has twenty days to appeal the notice of infraction. Any appeal of a violation determined to be an infraction shall be heard and determined by an administrative law judge. Monetary penalties collected under this section shall be deposited into the general fund.

CREDIT(S)

[1988 c 236 § 5.]

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Title 49. Labor Regulations (Refs & Annos)

¶ Chapter 49.12. Industrial Welfare (Refs & Annos)

    → **49.12.287. Sick leave, time off--Care of family members--Discharge of employee not permitted**

An employer shall not discharge, threaten to discharge, demote, suspend, discipline, or otherwise discriminate against an employee because the employee: (1) Has exercised, or attempted to exercise, any right provided under RCW 49.12.270 through 49.12.295; or (2) has filed a complaint, testified, or assisted in any proceeding under RCW 49.12.270 through 49.12.295.

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[2002 c 243 § 3.]

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Title 49. Labor Regulations (Refs & Annos)

Chapter 49.12. Industrial Welfare (Refs & Annos)

    → **49.12.290. Sick leave, time off--Care of family members--Collective bargaining agreement not reduced**

Nothing in RCW 49.12.270 through 49.12.295 shall be construed to reduce any provision in a collective bargaining agreement.

CREDIT(S)

[1988 c 236 § 6.]

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West's Revised Code of Washington Annotated Currentness

Title 49. Labor Regulations (Refs & Annos)

¶ Chapter 49.12. Industrial Welfare (Refs & Annos)

→ **49.12.295. Sick leave, time off--Care of family members--Notification of employers**

The department shall notify all employers of the provisions of RCW 49.12.270 through 49.12.290.

CREDIT(S)

[1988 c 236 § 7.]

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